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## Appeal Decision

Site visit made on 17 March 2020

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 29 May 2020**

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**Appeal Ref: APP/N1920/X/19/3233763**

**3 Aberford Road, Borehamwood, WD6 1PG**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Adam Strzelczyk against the decision of Hertsmere Borough Council.
  - The application Ref 19/0709/CLP, dated 6 May 2019, was refused by notice dated 2 July 2019.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is described as *'The erection of a rear roof extension with a hip to gable conversion and incorporating three front roof windows to the house'*.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 6 May 2019. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
3. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
4. It should be borne in mind that previous Council or Inspector decisions do not constitute case law. Nonetheless, the findings and approach to a particular matter may be material. There is a need for consistency in the planning process, but I am not bound to reach the same conclusions as previous decision makers provided there are sound planning reasons for departing from a previous decision. I must evaluate the evidence presented in relation to this particular proposal and site.

### Main Issue

5. Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. In

particular, paragraph B.1(c) says development is not permitted under this Class if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.

6. On this basis the main issue in this appeal is whether the development would conflict with Part 1, B.1(c) and, thereby, whether the Council's decision to refuse the LDC was well founded.

## **Reasons**

7. No 3 Aberford Road, the appeal property, is a mid-terrace, two-storey residential dwelling. The terrace's arrangement at this end is somewhat unorthodox in that No 1, the end property, is recessed from the terrace's front building line, and its principle elevation is at right angles to No 3. As a result No 1's front roof slope transgresses to include a small section of No 3's roof, recessed from the dwelling's main roof plane. The hip end feature physically separates these two elements.
8. It is proposed that a dormer roof extension be erected to the rear roof slope, and this would also involve the hip end being altered to a gable which itself would transgress to the dwelling's frontage, extending the roof plane sideways and effectively pulling the recessed roof plane, in part, forward.
9. The appellant considers that the proposed hip to gable would not lead to an extension forward of the principal elevation, and says that the hip to gable extends to the side of the dwelling. It is correct that hip to gable alterations, in the majority of cases, would essentially involve projecting and squaring off a side roof plane. However, in this particular instance, and crucial to the appeal, the proposal would involve an additional, front facing, section of roof slope being pulled forwards. Moreover, this section overlies the dwelling's principal elevation, albeit recessed from the main front wall, which faces the highway.
10. The appellant cites a case at 24 Berwick Road, a local property within the borough, where, in 2016, the Council issued a LDC (ref 16/0133/CLP) for a proposed development which, similarly, involved a rear dormer and hip to gable alteration. The main documents have been provided for my purposes.
11. I have looked at this case, and note that the physical configuration is roughly identical to the appeal proposal, although the development has now been carried out. It seems clear, in common with the proposed alterations relating to the current appeal, that a small section of the recessed roof plane has been brought forward to align with the main roof slope.
12. Given this, there would appear to be an inconsistency in the Council's approach. Nonetheless, as I have explained I am not bound by its previous decision to issue a LDC for a similar development. From my findings in the circumstances and appeal papers relating to the intended development I am satisfied that the proposal does not accord with the limitation set out in paragraph B.1(c).

## **Conclusion**

13. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC for the proposed roof extension and associated

alterations at 3 Aberford Road, Borehamwood, WD6 1PG was well founded.  
The appeal does not therefore succeed.

14. Accordingly, I will exercise my powers under section 195(3) of the 1990 Act, as amended.

*Timothy C King*

INSPECTOR